(1993) 05 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 796 of 1993

Guranditta Mal Shauti Parkash, Rice Millers — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 20-05-1993

Acts Referred:

Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 29(2)
Punjab Agricultural Produce Markets Act, 1961 — Section 23
Punjab General Sales Tax Act, 1948 — Section 2

Citation : (1993) 104 PLR 185

Hon'ble Judges : G.C. Garg, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : J.N. Kaushal, R.P. Sawhney, G.C. Sethi, Sanjay Kaushal, P.K. Goel, Rakesh Garg and Sanjeev Walia, for the Appellant; G.K. Chatrath, General and S.K. Sidhu, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Vide this judgment several writ petitions are being disposed of as common questions of law arises therein. In five writ petitions (Civil Writ Petitions Nos. 796, 987, 988, 1860 and 2357 of 1993), on notice of motion having been issued written statements have been filed on behalf of the official respondents. The other cases were simply adjourned, to be taken up alongwith the connected cases, referred to above. Those cases shall also stand disposed of even though no notices have been issued to the respondents and written statements have not been invited. Main judgment is thus prepared in CWP No. 796 of 1993. The petitioners in these writ petitions are licensees as defined under the Punjab Agricultural. Produce Markets Act, 1961 (hereinafter called as ''the-Markets Act'') They are also registered dealers under the Punjab Certral Sales Tax Act, 1948. Some of the writ petitioners make purchases of agricultural produce from other licensees in the area of the same Market Committee. They are liable to pay market fee on such transactions to the Market Committee. The Authorities under the Punjab General Sales Tax Act intending to impose purchase tax on such transactions claim that the amount of the market fee paid by the petitioners would also be part of the turn, over alongwith price of the agricultural produce and other necessary expenses incurred on such transactions. Thus the question for consideration is as to whether the purchase tax can be levied on the amount of market fee paid by the dealer.

2. In the other set of writ petitions, apart from the above question, another question is. for consideration which arises in the following circumstances. These writ petitioners who are registered'' dealers under the provisions of the Punjab General Sales Tax Act, apart from making purchases locally, they make purchases of agricultural produce from other places in the State of Punjab where they are not registered as licensees under the Markets Act. Since they are liable to pay, market fee on such transactions'' as purchasers, their sellers on their behalf collect market fee from them and deposit the same in the respective Market'' Committees as required under the provisions of the Markets Act. It'' is in such circumstances that the Assessing Authorities under the Punjab General Sales Tax Act claim that purchase taxis also payable on the turnover of the petitioners which should include the price of the agricultural produce and other expenses incurred by the petitioners and this should also include the amount of the market fee paid on their behalf by the sellers in the: respective Market Committee.

3. The case of the petitioners is two-fold. Firstly they allege that? they are not liable to pay purchase tax on the market fee as it is their legal obligation: to pay market fee at the time of making purchase and in the first set of cases such market fee is paid by them directly to the Market Committee as the agricultural produce is purchased by them locally. Such market fee-paid cannot be considered as part of the consideration paid by them for the agricultural produce purchased. With respect to the second, question the case of the petitioners is that under the provisions of the Markets Act the liability to pay market fee is of the purchaser and s(sic)nee the purchasers are not licensees under the provisions of the Markets Act, it is the liability of the sellers who may collect the amount of the market fee from the purchasers and deposit it with the respective Market Committees. The payment of market fee is their legal duty in the circumstances above and the amount of market fee cannot be treated as sale consideration or part thereof.

4. The stand of the official respondents in the written statements filed is that the turn over of the petitioners must contain the amount of the market fee paid by the petitioners, in both the sets of cases as the total amount spent by the petitioners for effecting purchase transactions would include the market fee as well. We have given due consideration to these questions and heard different counsel appearing in the cases as well as counsel for the State,

5. Section 23 of the Punjab Agricultural Produce Markets Act, 1961 is the charging Section and reads as under :-

"23. Levy of fees :-A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on advaldrem basis : -

(i) fees on the agricultural produce bought or sold by a license in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees. Provided that :-

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

Rule 29 (2) of the Rules framed under the aforesaid Act fixes the liability of the person for payment of the market fee. It reads as under:-

(2) The responsibility of paying the fees prescribed under sub rule shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer, Such fee shall be leviable as soon as an agricultural produce is bought or sold by a licensee.

6. From the aforesaid provisions it is quite clear that liability to pay market fee is of the buyer (purchaser) If the buyer is a licensee in the same market area, it is he who is to deposit the market fee with the Market Committee concerned. If the buyer is not a licensee in that Market Committee area then it is the seller who is to deposit the amount of the. market fee with that Market Committee and he may realise the same, the amount of the market fee, from the buyer. This would show that it is the legal duty and liability of the buyer to pay the market fee in case of effecting purchases of the agricultural produce.

7. Section 2(ff) of the Punjab General Sales Tax Act defines purchase as under :--

"(ff) purchased with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C or of goods on the purchase whereof tax is payable under any provision of this Act for cash or deferred payment or, other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge and includes,

(i) transfer, otherwise than in pursuance of a contract or property in any goods for cash, deferred payment or other valuable considerations;

(ii) transfer of property in goods-(whether as goods or in some other form) involved in the execution of a work contract;

(iii) delivery of goods in hire-purchase or any system of payment by installments;

(iv) transfer of the right to use any goods for any purpose whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) supply, by way of. or as part of any service or in any other whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and such transfer, delivery or supply of goods shall be deemed to be a purchase of these goods by person to whom such transfer, delivery or supply is made from the person by whom the transfer delivery or supply is made."

8. Section 2(i) of the Punjab General Sales Tax Act defines ''turnover'' as under ''.-

" ''turnover'' includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount and trade discount according to ordinary trade practice, but including any sum charged for any thing done by the dealer in respect of the goods at the time of or before, delivery thereof."

9. The incidence of taxation is provided u/s 4 of this Act. The dealer is liable to pay tax whose turnover exceeds the tax able quantum. The rate of tax is provided u/s 5 of the Act. The mode of payment of tax is provided u/s 10 of the Act.

10. The first question need not detain us for detailed discussion as it is the legal duty of the buyer (purchaser) to pay the market fee as the petitioners are licensees within the market area Such market fee is not paid by them to the sellers. Obviously the amount of the market fee cannot be part of the sale consideration. The petitioners thus were not required to show in their turnover the amount of the market fee as part of the purchase price of such of the agricultural produce purchased by them locally Such market fee is not to form part of the turnover for assessment or payment of purchase tax. Reference hereinafter is being made to some of the judicial pronouncements particularly relating to the amount of market fee as to whether the same is to form part of the turnover or not in respect of the assessees, sellers. The answer was given in the negative and the same analogy would apply with more vigure to the purchaser The Supreme Court in Anand Swarup Mahesh Kumar v. The Commissioner of Sales fax (1980) 46 S. T. C. 477, dealt with such a question concerning U. P. Sales Tax Act and U. P. Krishi Utpadan Mandi Adhiniyam relating to payment and collection of market fee. The question raised therein was as to whether the amount of market fee paid to "the Market Committee and subsequently collected from purchaser by She dealer (Commission Agent) would be included in the turnover of purchases. The answer was given in the negative. It was observed as under :-

"Where a dealer is authorised by law to pass on any tax payable by him on a transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration when he includes it in ''the price and realises the same from the purchaser. The essential factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorising a dealer to recover the tax payable, on the transaction of sale from, the purchaser "

It was further observed :-

The market fees payable under the U.P. Krishi Utpadan Mandi Adiniyam, 1964, being a sum which can, be collected from, the purchaser by virtue of the provision contained in Section 17(iii) of the, Adhiniyam by the commission agent, who is, required to pay the same to the market committee, cannot be considered as forming part of the consideration, paid or payable by the purchaser to the commission agent in respect of purchase of goods at an auction held within a market area established under the Adhiniyam and, therefore, it cannot be included in the turnover of purchases for purposes of levy of tax u/s 3-D of, the U.P, Sales tax Act, 1948.

A combined reading of Section 10 of the, Adhiniyam, Rule 79 of the Rules made under the Adhiniyam and the bye-laws made, by the market committee shows that a commission agent cannot realise any commission higher than what, is prescribed bylaw. The commission chargeable by the commission agent is not a sum which he has in his turn to pay to an authority either, by way of tax or by way of fee but is only a reward for the services rendered by him. Therefore, the commission (dami) payable by a purchaser of goods to a commission agent operating within the market area established under the Adhiniyam can be treated as, forming part of turnover of purchases."

11. The aforesaid decision was relied upon by the Andhra, Pradesh High Court in State of A. P. v. Tholasi Pandurangaiahchetty (1989) 75 S. T. C. 438. observing that the market fee collected by the dealer could rot be said to form part of the taxable turnover of the dealer for the purposes of; levy of sales tax Likewise Anand Swaroop''s case (supra) was. relied by the High Court of Rajasthan in Commercial Taxes Officer v. Trilok Chand Prem Parkash (1987) 67 S.T.C. 432.

12. The first question posed is answered in the negative holding that the amount of the market fee paid by the petitioners to the respective Market Committees in respect of purchases made, locally is not to be included in the turnover for the purposes of assessment of tax.

13. The contention of the, State counsel that market fee is to be included as part of the turnover for the purposes of assessment of purchase tax otherwise cannot be accepted. The Market Committee cannot allege that the moment sale-transaction takes place within the market area some sales tax or purchase tax is leviable and that should also be treated as part of sale price and accordingly, market fee. assessed, thereon. Likewise, it cannot be said that payment of market fee would be part of the sale consideration, which, form, part; of the

turnover assessable to sales tax.

14. The second question posed needs some discussion. As per, contention of the learned'' counsel for the State the seller-a licensee in the market area is legally duty bound to pay the market fee on complete on of the sale transaction and he is subsequently to pass over the liability to the purchaser. Thus, for all intents arid purposes the purchase price of the petitioners who are not licencees within such notified areas of the Market Committees would also include, the Amount of the market fee paid on their behalf by the sellers, to the market Committees as this was done before effecting actual delivery. The purchaser would be liable to pay purchase tax on them. The State counsel has referred, to the decision of the Supreme Court in Commissioner of Sales Tax U. P. v. Rai Bharat Das & Bros. (1988) 71 S. T. C. 277. This was a case where on the asking of the purchaser the seller sent the goods in sound gunny bags the packing charges for providing such gunny bags were held to be included in the turnover of the sale price. The ratio of the decision aforesaid cannot apply to the facts of the case in hand as no question of doing something extra at the request of the purchasers by the sellers to escalate the sale price was met. On the same ground the decision of Madras High Court in Dalmia Cement (Bharat) Ltd. v. State of Tamil Nadu (1991)81 S.T.C. 327, is of no help to the State. Packing charges for the cement Were held to be included in the sale price.

15. Shri J. N. Kaushal, Sr. Advocate, appearing on behalf pf some of the petitioners has argued that it was legal obligation of the petitioners to pay the market fee and the same could not be treated as part of the sale consideration. In support of this contention reliance has been placed on the decision of the Madras High Court in Cauvery Sugars and Chemical Ltd. and Ors. v. The Joint Commercial Tax Officer, Esplanade I, Madras-I, and Anr. (1972) 29 S.T.C 1. The assessee was a sugar manufacturer. In discharge of his own statutory liability he paid cess under the Madras Sugar Factories Control Act. It was not the liability of the grower-seller, nor the same was paid on his behalf. It was held that the payment of the cess u/s 14 of the Madras Factories Control Act read with relevant Rules was unconnected with the transaction of purchase and the price fixed. In para 4 of the judgment the following observations were made :-

"In holding that excise duty paid by the purchaser of tobacco was not part of the purchase price the Mysore High Court in P. V. Beedies (Private) Ltd. v. State of Mysore, observed:-

"If, as it is well settled, the consideration is a benefit which flows from the buyer to the seller, normally it would be impossible to suggest that excise duty paid by the buyer in discharge his own statutory liability involved any benefit to the seller, unless the duty was paid on behalf of the seller."

With respect, we agree with this observation. In the case before us as we have already pointed out, the cess, was paid by the assessees in compliance with the statutory liability which was on them In fixing the price for the sugarcane, cess was not taken into account. There was also no stipulation between the assessees and the growers-sellers that the duty should, as between them, be borne by the seller and that when the buyer, on whom the liability was, paid the cess, it should be on behalf of the seller. The cess paid by the assessees in discharge of their own statutory liability and on their own account cannot therefore form part of the purchase price and therefore of the purchase turnover chargeable to tax The inclusion of the cess in the changeable purchase turnover was, therefore, illegal "

16. As already discussed a boy, the legal liability to pay market Fee is on the buyer and if such a buyer is not a licensee of that market area, it is the duty of the seller to deposit the market fee on behalf of the buyer and then to realise it from !he buyer. It is not the legal obligation of the seller to pay market fee on such a transaction Thus the amount of market fee cannot be treated as part of the sale consideration. The argument of the State Government that at the asking of the purchaser the seller was depositing the market fee and thus it should be part of the sale consideration, cannot be accepted, In this context further argument is that this was done before effecting the delivery. This contention is devoid of merit The payment of market fee is not something special asked by the purchaser to be done for effecting delivery of the goods. As already observed, it is the liability of the purchaser to pay the market fee and the amount of such market fee is not to be the part of the turnover and thus no purchase tax is to be paid by the petitioners in second category of cases wherein both the questions referred to above arise.

17. For the reasons recorded above all the writ petitions are allowed holding that purchase tax cannot be charged on the amount of market fee as the same do not form part of the turnover. There will be no order as to costs.

